

## REMARKS

The pending Office Action addresses claims 61-69, 71-89, and 95. Applicant appreciates the Examiner's allowance of claims 72-74, and the Examiner's indication that claims 84-89 represent allowable subject matter. Remaining claims 61-69, 71, 75-83, and 95 stand rejected.

### *Claim Rejections Pursuant to 35 U.S.C. §103*

The Examiner rejects claims 61-69, 71, 75-83, and 95 pursuant to 35 U.S.C. §103(a) as being obvious over U.S. Patent 5,725,529 of Nicholson et al. ("Nicholson") in view of U.S. Patent No. 4,870,957 of Goble et al. ("Goble"). The Examiner asserts that Nicholson teaches the claimed invention except for "threading the soft tissue through the aperture." The Examiner relies on Goble to teach this step arguing that it would have been obvious to modify Nicholson in view of Goble to "shorten and simplify the procedure."

Independent claims 61, 75, and 95 each recite a method for anchoring soft tissue within bone including drilling an opening into bone, inserting a stabilizing element into the bone opening, *threading soft tissue through an aperture formed in a proximal portion of an insertion element*, and inserting the insertion element into the stabilizing element. Inserting the insertion element into the stabilizing element is effective to deformably expand the stabilizing element.

One skilled in the art would have no motivation to modify Nicholson in view of Goble to include the step of threading soft tissue through an aperture formed in a proximal portion of an insertion element. Goble teaches a method of implanting a *prosthetic ligament graft* within a bone tunnel to replace a *torn ligament*. The reason Goble threads soft tissue through an aperture is because the soft tissue, namely the ligament graft, needs to be anchored at both ends to form an artificial graft. This is illustrated in Figure 5 of Goble, which shows a cruciate ligament secured with femoral and tibial bone tunnels. Nicholson is not directed to replacing a torn ligament, or methods for securing the same. To the contrary, Nicholson teaches a method of affixing a large section of soft tissue to bone that includes inserting a fastener into bone and using a suture to secure the soft tissue to the bone. The suture is threaded through the tissue and merely used to tie the tissue to the bone. It is not used as a ligament to extend between two structures and allow controlled movement. Replacing the suture with a soft tissue, as suggested by the Examiner, would be useless and would

provide no advantage. Such a modification would be the equivalent to using a golf club to play baseball. Just because a golf club and a baseball bat are similar does not mean that they would be used interchangeably. While each is a stick designed for sport, each is specifically configured to perform a certain function for a particular sport. For example, a golf club would not be as effective as a baseball bat at hitting a home run. Similarly, a ligament graft and a suture would not be used interchangeably. Nicholson's suture is used as a suture to tie a piece of tissue to bone. No person having ordinary skill in the art would use a soft tissue graft to function as a suture. They would simply use a suture.

Accordingly, it would not have been obvious to modify Nicholson in view of Goble and independent claims 61, 75, and 95, as well as claims 62-69, 71, and 76-83 which depend directly or indirectly therefrom, distinguish over Goble and Nicholson and represent allowable subject matter.

### ***Conclusion***

In view of the above amendments and remarks, Applicant submits that all claims are in condition for allowance, and allowance thereof is respectfully requested. Applicant encourages the Examiner to telephone the undersigned in the event that such communication might expedite prosecution of this matter.

Respectfully submitted,

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